HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 691 (MS) of 2004

Vinod Kumar
S/o Late Sh. Hans Ram
R/o Village Jauli Grant
Pargana- Parwadun
District Dehradun ..... Petitioner

VS

Additional District Judge
1st Fast Track Court Dehradun
and others. ..... Respondents

Counsel for the petitioner Sh. V.B.S. Negi
Standing Counsel for the respondents.

Dated:- 7-8-2004

Hon'ble Rajesh Tandon J.

Heard Sh. V.B.S Negi learned counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for quashing the impugned order dt. 30-7-2004 passed by the Additional District Judge as well as the order dt. 9-4-2003 passed by learned Civil Judge (Senior Division) Dehradun by which the application 6C2 has been rejected.

Brief facts giving rise to the present writ petition are that the petitioner is the owner in possession of land in dispute. The disputed land was jointly purchased on 6-11-1974 by a registered sale deed by some persons namely Sh. Hans Ram who was the father of the petitioner.

The petitioner has submitted that the land in dispute was never divided and from the date of its purchase, it has been registered jointly in the name of petitioner and other respondents. On 4-1-2002 respondents No. 2 and 3 sold ½ of

the total property to respondent No.11 for which they were not entitled.

The petitioner has stated that he has filed a Civil Suit No. 41 of 2002 before the Civil Judge (Senior Division) Dehradun praying for permanent injunction against the respondent No.2 and 3.

On the application under Order 39 Rule 1 of the Code of Civil Procedure the learned Civil Judge (Senior Division) has passed the order maintaining the status quo on 11-1-2002. However, the same was vacated vide order dt.9-4-2003. Aggrieved order dt. 9-4-2003 the petitioner has preferred the appeal No. 59 of 2003 before the Additional District Judge and the same was rejected on 30-7-2004.

The application of temporary injunction under order 39 Rule 1 of the Code of Civil Procedure has been rejected by the two courts below, I find no infirmity in the order so as to interfere under Article 226/227 of the Constitution of India in Surya Dev Rai Vs. Ram Chander rain ad others 2003 (6) SCC 675, provides as under:-

> *"We have carefully perused the Full Bench decision of the Allahabad High Court in Ganga Saran case relied on by the learned counsel for the respondent and referred to in the impugned order of the High Court, We do not think that the decision of the Full Bench has been correctly read. Rather, vide paragraph 11, the Full Bench has itself held that where the order of the civil court suffers from patent error of law and further causes manifest injustice to the party aggrieved, then the same can be subjected to a writ of certiorari. The Full Bench*

added that every interlocutory order passed in a civil suit is not subject to review under Article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further, such an order causes substantial injustice to the party aggrieved jurisdiction of the High Court to issue a writ of certiorari is not precluded. However, the following sentence occurs in the judgment of the Full Bench (AIRp. 119).

"Where an aggrieved party approaches the High Court under Article 226 of the Constitution against an order passed in civil suit refusing to issue injunction to a private individual who is not under statutory duty to perform public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Article 226 of the Constitution would not be maintainable."

" Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less that often, the High Court would be faced with a dilemma. It it intervenes in pending proceeding there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to

exercise self-restraint and not to intervene because the errors of jurisdiction though committed is yet capable of being taken care of and corrected at a later state and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where " a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

However, without entering into merits of the claim of the parties, court below is directed to decide the suit No. 41 of 2002 within a period of 4 moths from the date of filling of the certified copy of this order. However in the interest of justice till the disposal of the suit the order of status quo shall remain operative.

Subject to the aforesaid observation, the writ petition is dismissed. No order as to costs.

Dated: - 7-8-2004 **(RAJESH TANDON J.)**

M.K